

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MADALYN M. SOULLIERE,

Plaintiff,

v.

CASE NO. 07-10695
HON. LAWRENCE P. ZATKOFF

BURGER KING.

Defendant.

OPINION AND ORDER DISMISSING COMPLAINT UNDER 28 U.S.C. § 1915(e)

I. INTRODUCTION

Plaintiff Madalyn Soulliere filed her *pro se* Complaint on February 16, 2007. In her Complaint, Plaintiff states that victims of sexual harassment are entitled to relief. Currently before the Court is Plaintiff's request to proceed without prepayment of fees. Plaintiff's request to proceed without prepayment of fees is GRANTED; however, the Court will DISMISS Plaintiff's Complaint because it fails to state a claim under 28 U.S.C. § 1915(e)(2).

II. BACKGROUND

Plaintiff complaint states that under Title VII of the Civil Rights Act, a person discharged from employment on the basis of sex is entitled to relief. Plaintiff further states that she suffered both economic injury and discharge while training to be an assistant manager at one of Defendant's establishments. *See* Pl.'s Compl.

III. ANALYSIS

A. Plaintiff's Request to Proceed without Prepayment of Fees

Plaintiff has filed a motion to proceed without prepayment of fees. Under 28 U.S.C. §

1915(a), “any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding . . . without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” The reference to assets of “such prisoner” is likely a typographical error; thus, § 1915(a) applies to all natural persons. *See Floyd v. U.S. Postal Serv.*, 105 F.3d 274 (6th Cir. 1997). If a motion to proceed without prepayment of fees is filed and accompanied with a facially sufficient affidavit, the court should allow the complaint to be filed. *See Gibson v. R.G. Smith Co.*, 915 F.2d 260, 261 (6th Cir. 1990) (citing *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981)). Only after the complaint is filed is it tested to determine whether it is frivolous or fails to state a claim. *See Gibson*, 915 F.2d at 261. The Court finds Plaintiff’s financial affidavit facially sufficient; therefore, the Court will grant Plaintiff’s motion to proceed without prepayment of fees.

B. Dismissal Under § 1915(e)(2)

Once a complaint is filed *in forma pauperis* under § 1915(a), it is tested under § 1915(e). Under 28 U.S.C. § 1915(e)(2), a court “shall dismiss” the case at any time if the court finds that the case is “(i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A complaint is frivolous under § 1915 if it lacks an arguable basis in law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 323 (1989); *see also Wilson v. Yaklich*, 148 F.3d 596, 600 (6th Cir. 1998) (stating that complaints can be dismissed as frivolous “only when the claim is based on an indisputably meritless legal theory, or where the complaint’s factual contentions are clearly baseless.”). Moreover, “courts have no discretion in permitting a plaintiff to amend a complaint to avoid a *sua sponte* dismissal. If a complaint falls within the requirements of § 1915(e)(2) when

filed, the district court should *sua sponte* dismiss the complaint.” *McGore v. Wigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997).

The Court finds that the Plaintiff’s Complaint fails to state a claim upon which relief can be granted. Plaintiff’s complaint merely states that victims of sexual harassment are entitled to relief and that she was discharged from her employment. However, the complaint contains no allegations of any sexual harassment. Accordingly, Plaintiff’s Complaint fails to state a claim under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke*, 490 U.S. at 323; *see also Wilson*, 148 F.3d at 600. Because the Court has no discretion to allow the Plaintiff to amend her Complaint under § 1915(e), the Court must dismiss Plaintiff’s Complaint as frivolous. *See McGore*, at 612.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: September 26, 2007

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on September 26, 2007.

s/Marie E. Verlinde
Case Manager
(810) 984-3290